

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GENLYTE THOMAS GROUP LLC,
a Delaware Limited Liability Company
Plaintiff,

v.

ARCH LIGHTING GROUP, INC. d/b/a
ARCHITECTURAL LIGHTING SYSTEMS
Rhode Island Corporation

Defendant.

Civil Action No. 05-CV-10945 WGY

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STAY
EXECUTION OF JUDGMENT PENDING APPEAL**

Plaintiff, Genlyte Thomas Group LLC (“Genlyte”), by counsel, for its Opposition to the Motion of Defendant, Arch Lighting Group d/b/a Architectural Lighting Systems (“ALS”), to Stay Execution of Judgment Pending Appeal (“ALS’s Motion”), states:

After three motions attempting to stay execution of the Judgment, ALS has now for the first time filed a copy of a bond with the Court. However, the bond finally obtained by ALS fails to fully secure Genlyte and ALS’s third attempt to stay execution should likewise be denied.

In addition to the award of \$207,554, the Judgment provides that ALS shall pay to Genlyte a royalty in the amount of \$67 per fixture for sales of all infringing fixtures for which there was a legally enforceable contract at the time of the Judgment. (Final Judgment and Permanent Injunction, ¶ 8, attached as Exhibit A). On June 22, 2007, counsel for Genlyte took the deposition of Paul Northrup, Controller for ALS. During that deposition Mr. Northrup testified that ALS received orders on February 1, 2007 (four days before the Judgment was entered) for approximately 350 of ALS’ infringing

fixtures. (Paul Northrup Deposition Transcript [“Northrup Trans.”], June 22, 2007, 21:19-23; 22:1-19, excerpts attached hereto as Exhibit B). Consequently, the amount of the bond should also include \$23,450 (\$67 x 350 infringing fixtures), to protect Genlyte’s rights under paragraph 8 of the Judgment. However, the bond fails to cover this amount:

Damages (Judgment, p. 2, ¶ 3)	\$207,554
Prejudgment Interest (Judgment, p. 2, ¶ 3)	\$30,089
Royalties (Judgment, p. 4, ¶ 8)	\$23,450
10 % (Local Rule 62.2)	\$26,109.30
Costs (Local Rule 62.2)	\$500
TOTAL	\$287,702.30
Amount of Bond	\$274,526

As a result, the bond is insufficient to protect Genlyte and, therefore, Genlyte respectfully requests the Court to deny ALS’s Motion.

On the other hand, if the bond is not required to cover the amount of the royalties, then ALS should be obligated to pay the royalties regardless of a stay. Mr. Northrup testified that ALS has received payment on 146 of the 350 fixtures to which it had a legally binding contract at the time of the Judgment, but has not paid Genlyte the royalties on such fixtures. Moreover, Mr. Northrup testified that ALS expects to receive additional payments on another portion of the 350 fixtures by the end of July. (Northrup Trans., 21:1-19; 22:1-16; 29:12-23; 30:1-11; 32:9-12; 34:7-23; 35:1-23; 36:1-23). ALS cannot have it both ways – either the bond should be required to cover the amount of royalties for the 350 fixtures or ALS should pay Genlyte the royalties owed.

For the foregoing reasons, Genlyte respectfully requests the Court to deny ALS's Motion.

Respectfully submitted,
GENLYTE THOMAS GROUP LLC
By Its Attorneys,

/s/ Kevin Gannon
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as on registered participants, if any, on this 17th day of July, 2007.

/s/ Kevin Gannon

EXHIBIT A
Final Judgment and
Permanent Injunction

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GENLYTE THOMAS GROUP LLC,

Plaintiff,

v.

ARCH LIGHTING GROUP, INC. d/b/a
ARCHITECTURAL LIGHTING SYSTEMS

Defendant.

Civil Action No. 05-CV-10945-WGY

**[PLAINTIFF'S PROPOSED] FINAL JUDGMENT AND
PERMANENT INJUNCTION FOLLOWING TRIAL TO JURY AND VERDICT**

Trial having been held before a jury and concluded on February 1, 2007, the parties having been heard, and the jury having returned its verdict that Defendant Arch Lighting Group, Inc. d/b/a Architectural Lighting Systems ("ALS") infringed the patent-in-suit, U.S. Patent No. 5,038,254 ("the '254 Patent") as follows:

1. ALS' MulTmed 2x4 product MT2A infringed Claim 1 and 3 of the '254 Patent under the doctrine of equivalents;
2. ALS' MulTmed 2x4 product MT2B infringed Claim 1 and 3 of the '254 Patent under the doctrine of equivalents;
3. ALS' MulTmed 2x2 product MT1D literally infringed Claim 1 of the '254 Patent; and
4. That the amount of damages suffered by Genlyte as a result of such infringement was \$207,554.00.

The jury having returned its verdict and other determinations having been made during the course of this case, and the Court having considered the entire Record of this cause and having heard argument of counsel and being sufficiently advised,

It is ORDERED AND ADJUDGED,

1. That U.S. Patent No. 5,038,254 is not invalid and is not unenforceable;
2. That Defendant, ALS, be and hereby it is adjudicated as liable for infringement of the '254 Patent, as found by the Jury;
3. That Genlyte shall recover of and from Defendant, ALS, the sum of \$207,554.00 plus pre-judgment interest on said sum in the amount of \$ 30,089 as set forth in Paragraph 12 of the Affidavit of Michael Tate dated February 5, 2007 filed contemporaneously herewith;
4. That within 30 days of the date of entry hereof ALS provide a certified accounting to Genlyte of all sales of MT2A, MT2B and MT1D MulTmed hospital patient room lights from September 30, 2006 to the date hereof, and with such accounting ALS shall pay to Genlyte as additional damages the sum of \$67.00 per product sold.
5. That ALS, its officers, directors, employees, agents and attorneys, and all persons acting in concert with any of them, are permanently enjoined and prohibited from making, using, selling, offering for sale or importing into the United States the patented inventions recited in Claim 1 and Claim 3 of the '254 Patent, and from active inducement of infringement of these claims of the '254 Patent.
6. That the injunction set forth in Paragraph 5 shall include the mandatory injunction and requirement that ALS forthwith cease and desist from
 - [a] making or selling or offering to sell in any fashion the following products, MT2A (2x4 product with reading, ambient and examination lights), MT2B (2x4 product with reading, ambient, examination lights and nurse's night light) and MT1D (2x2 product with reading and

ambient lights) or any product having structure similar thereto which would infringe Claim 1 or Claim 3 of the '254 Patent;

[b] providing or offering to provide the Brochure denominated as Exhibit 20 during trial of this cause, which Brochure/Exhibit 20 includes depictions and/or descriptions of the MulTmed 2x4 and certain 2x2 products;

[c] maintaining on its website the Power Point presentation set forth in Exhibit 21 during trial of this cause;

[d] advertising in any manner the MT2A, MT2B or MT1D products as being available for sale or use or import into the United States; and

[e] modifying any other product including but not limited to the ALS Latitude patient bed light (the present structure of which was depicted in Exhibit 34 at trial of this cause) to contain any structure that would infringe Claim 1 or Claim 3 of the '254 Patent.

7. That the injunction set forth in Paragraph 5 shall further include the mandatory injunction and requirement that ALS [a] gather up and destroy all inventory of MT2A MulTmed 2x4 products, MT2B 2x4 products and MT1D 2x2 products, and certify such destruction to the Court and to Genlyte within thirty (30) days of the date of entry of this Judgment; [b] inform in writing all sales representatives of ALS who in any way represent ALS in selling or offering for sale ALS' MT2A, MT2B or MT1D MulTmed products that such products have been permanently enjoined and are no longer available for sale or use in a hospital patient room or in any other environment, and certify such efforts to the Court and to Genlyte within thirty (30) days of the entry hereof; and [c] ~~notify in writing all specifiers, architects, engineers or other hospital~~ *W/MY*

~~administrators or employees who determine or recommend the selection of hospital patient room lights that the ALS' MT2A, MT2B and MT1D MulTmed products are no longer available for sale or use in a hospital patient room or in any other environment, and certify such efforts to the Court and Genlyte within thirty (30) days of the date hereof.~~

8. The provisions of Paragraphs 5, 6 and 7 hereof do not apply to sales and installation of ALS' MT2A, MT2B and MT1D MulTmed products for which there is a legally enforceable contract for ALS to provide such products as of the date of entry of this Judgment. As to such legally enforceable contracts, ALS may fulfill same and receive payment therefor, provided that ALS pays to Genlyte, in addition to the amounts set forth in Paragraph 3 hereof, a royalty in the amount of \$67.00 per product sold within thirty (30) days from the date ALS receives payment. Every thirty (30) days after entry hereof, ALS shall report to Genlyte the number of such sales and at that time remit to Genlyte the amount of royalty payments required to be paid. When ALS has completed its sales of all MT2A, MT2B and MT1D MulTmed products permitted under this Paragraph, ALS shall certify in writing to the Court and to Genlyte that all such sales have been completed and all such payments to Genlyte have been made.

9. The injunction portions hereof may be removed upon a submission of a Joint Motion for Removal of Permanent Injunction executed by the parties.

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10. This is a final and appealable Order, on which execution may be had according to the Federal Rules of Civil Procedure and the various statutes of the United States and the laws of Massachusetts.

SO ORDERED AND ADJUDGED this 5th day of February, 2007.

William G. Young
William G. Young, U.S. District Judge

EXHIBIT B

Excerpts Northrup Transcript

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NO. 05-CV-10945-WGY

GENLYTE THOMAS GROUP LLC,
Plaintiff,

vs.

ARCH LIGHTING GROUP, INC., d/b/a
ARCHITECTURAL LIGHTING SYSTEMS,
Defendant.

DEPOSITION OF PAUL B. NORTHROP taken
pursuant to Notice under the applicable
provisions of the Federal Rules of Civil
Procedure on behalf of the Plaintiff, before
Simonne J. Elwood, R.P.R. and a Notary Public
in and for the Commonwealth of Massachusetts,
at the office of Bartlett Hackett Feinberg
P.C., 155 Federal Street, 9th Floor, Boston,
Massachusetts, commencing on Friday, June 22,
2007 at 9:55 a.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

Vol. 1

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REPRESENTS THE DEFENDANT

1 represents what we paid for that material.

2 Q Okay. Do you have an inventory of finished
3 goods as well?

4 A Very little.

5 Q Very little?

6 A Maybe \$1,000.

7 Q Okay. So you only manufacturer as you have
8 sales lined up?

9 A Yes.

10 Q Okay.

11 A Yes.

12 Q Okay. Does Arch have any assets such as
13 artwork or antique furniture or anything like
14 that that it owns?

15 A No.

16 Q And by artwork, I mean, of real value as
17 opposed to a print on a wall.

18 A No, sir.

19 Q Does Arch have outstanding orders for the
20 Multimed 2x4 products MT2A and MT2B and Arch's
21 Multimed 2x2 products and MT1D products at
22 this time?

23 A Yes.

1 Q Okay. Can you tell me what those outstanding
2 orders are?

3 A In terms of dollar value?

4 Q Dollar value, numbers, yes, whatever you can
5 give me from memory; and that's as of today,
6 I guess.

7 A Yes. I believe there are four orders?

8 Q Four orders for what?

9 A Approximately 350 fixtures in total, and the
10 dollar value, I would have to say, is -- I
11 was going to say 400,000. I wouldn't swear
12 to that.

13 Q Who are the customers on the four orders?

14 A I don't recall.

15 Q When did those orders come in?

16 A On or about February 1st of 2007.

17 Q Okay. All orders came in more or less at the
18 same time around that time on that date?

19 A Yes.

20 Q And what products are included in those
21 orders, all four, five of those products that
22 I listed?

23 A I don't know.

1 obligation?

2 A We're very close. We have a letter of
3 commitment and a letter of credit, I should
4 say, from Sovereign Bank which has been
5 forwarded to the bonding company, which will
6 be Hanover Insurance, which I expect to be in
7 place next week. I believe it could have
8 been done this week except, I think, one of
9 the officers at Sovereign was out for a
10 couple of days. So it should be in place
11 next week.

12 Q Between February 1st and this day, has Arch
13 Lighting received any payments with respect
14 to the contested products?

15 A Yes.

16 Q Okay. Do you know the amounts of those
17 payments?

18 A I don't. I don't recall the detail.

19 Q Ball park?

20 A I can say this. I believe there was an
21 affidavit that we filed with -- reported to
22 Genlyte for sales in February, specifically,
23 customers' invoices, billings which those

1 February sales have been paid. I don't
2 recall the dollar amounts. I mean, I'm even
3 afraid to guess.

4 Q Okay. Well, let me show you a document and
5 ask you if this refreshes your recollection;
6 are those the items that have been paid?

7 (Indicating)

8 A (Reviewing document) Yes.

9 Q And has any payment been made on account of
10 those receipts to Genlyte?

11 A No.

12 Q When was -- When were those funds received?

13 A I can't say exactly, but I would estimate
14 during the month of April.

15 Q Okay. And do you know why payments haven't
16 been made to Genlyte?

17 A May I consult with our attorney?

18 Q Sure. But I don't want to hear what you talk
19 about with your attorney, but you may
20 certainly -- Why don't you go outside and
21 consult.

22 THE WITNESS: Can I just go ahead and
23 answer?

P. NORTHROP

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1 fixture sold since February 1st, does it?

2 A That's correct. It does not.

3 Q Okay. Are you aware that under the order
4 entered by Judge Young, it provided that Arch
5 had to pay Genlyte a royalty of \$67 per
6 product sold within 30 days from the date
7 that Arch received payment?

8 A Yes.

9 Q Okay. How many fixtures were comprised by
10 the receipts that you described in April for
11 the sales in February?

12 A I believe the affidavit says 146.

13 Q Okay. So do you know what \$67 times 146 is?
14 I don't know if you've calculated it. I can
15 do it.

16 A I cannot tell you right now, but I have
17 calculated it. I prepared a schedule which
18 listed those -- what comprised those 146
19 fixtures and then extended that times \$67.
20 Offhand, I don't know what that dollar amount
21 is. \$6,000, maybe.

22 Q I'm coming up with \$9,782, but my math may be
23 wrong. But those amounts have not been paid,

1 to 60 days. So I'm estimating that the -- if
2 those fixtures were billed in February, then
3 payment would have come in in April. It's
4 possible that it could have been a little
5 earlier. It's possible it could have been a
6 little later. Not likely later.

7 Q Are those receipts that we're talking about
8 right now the only receipts for the products
9 in question received by Arch since February
10 1st, '07?

11 A Yes.

12 Q Are you anticipating receiving any additional
13 receipts in the next 30 days?

14 A Yes.

15 Q And do you know in what amount and from whom?

16 A I don't recall the amount. There were no
17 sales of those fixtures in March and April.
18 I believe there were some sales in May.

19 Q Out of hold orders? In other words, they
20 were pre-existing orders?

21 A They were pre-existing orders. They may have
22 been on hold previously, but they were orders
23 that we built -- were released, built and

1 shipped in May.

2 Q And do you know how many products that was?

3 A I don't recall. It was something less than
4 February; that I do recall. It was less than
5 146. I know the main number was a lesser
6 amount.

7 Q The total universe of outstanding hold and
8 released orders is the 350 units we discussed
9 earlier, is that correct?

10 A Pertaining to those fixtures. Total hold and
11 released orders for the company as a whole
12 for all fixtures is more than that.

13 Q No. I'm only concerned about these fixtures.

14 A That's correct, yes. Yes.

15 Q And besides -- Are there any outstanding
16 invoices right now that Arch has for sales of
17 these fixtures that are at issue in this
18 case?

19 A Yes.

20 Q And do you know what the amount is of those
21 outstanding or the number of fixtures
22 involved in those outstanding invoices?

23 A They would be the May shipments which I

1 believe was about -- had a sales value of
2 about \$23,000.

3 Q And that would be approximately how many
4 fixtures?

5 A I couldn't say.

6 Q What kind of records would exist with respect
7 to the sales of these particular products?

8 A There are invoices generated with shipping
9 documents.

10 Q And you've got orders?

11 A Yes.

12 Q And acknowledgements?

13 A Yes.

14 Q And are they kept by customer; how are they
15 maintained?

16 A They're kept by specific customer; by
17 specific customer P.O.

18 Q Okay. Could -- Okay. Do you know the number
19 of fixtures that were sold by -- these
20 fixtures that were sold by Arch between
September 30th and February 5th of 2007?

22 A I believe it's 412. I'm recalling that from
23 the affidavit.

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ARCHITECTURAL LIGHTING SYSTEMS
Rhode Island Corporation

Defendant.

Civil Action No. 05-CV-10945 WGY

**[Proposed] ORDER DENYING DEFENDANT'S MOTION
TO STAY EXECUTION OF JUDGMENT PENDING APPEAL**

This matter is before the Court on the motion by Defendant, Arch Lighting Group, Inc. ("ALS") To Stay Execution of Judgment Pending Appeal. The Court, having reviewed and considered the parties' respective memoranda and supporting material, and any responses thereto, and otherwise being duly and sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that ALS's Motion To Stay Execution of Judgment Pending Appeal be, and it hereby is, DENIED.

SO ORDERED this ____ day of _____, 2007.

William G. Young, U. S. D. J.

TENDERED BY:

Counsel for Plaintiff,
Genlyte Thomas Group LLC